12-21-2017

State v. Jarrett Appellant's Brief Dckt. 45080

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45080
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR 2016-13885
v.	)	
	)	
SPENCER ALEXANDER JARRETT,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After a jury trial, Spencer Alexander Jarrett was found guilty of one count of sexual abuse of a child under the age of sixteen, and two counts of possession of sexually exploitative material. For the sexual abuse charge, the district court imposed a sentence of fifteen years, with five years fixed. For the possession counts, the district court imposed two concurrent sentences of ten years, with five years fixed, and ordered that those sentences run concurrent to the sentence in the sexual abuse case. On appeal, Mr. Jarrett asserts that the district court abused its discretion by imposing excessive sentences.

Statement of the Facts & Course of Proceedings

In May of 2016, Erika Wonacott reported to law enforcement that her daughter, M.W., was being enticed by an adult male by phone, text, and social media. (Presentence Report (*hereinafter*, PSI), p.3.)[1] M.W. subsequently told authorities that she and her friend, T.S., were engaging in an online relationship with an adult they knew as "Alex." (PSI, p.3.) M.W. said that Alex wanted to meet her and had masturbated on the phone with her. (PSI, p.3.) Mr. Jarrett was identified by his Facebook profile and his phone number, which his parole officer confirmed. (PSI, p.3.)

A forensic data extraction of Mr. Jarrett's phone, and the phones of M.W. and T.S., revealed phones calls to and from Mr. Jarrett and M.W. and text messages regarding sexual activity. (PSI, p.3.) Images of T.S.'s nude breast and vagina were found on Mr. Jarrett's phone, and T.S. confirmed that she had sent the pictures to Mr. Jarrett. (PSI, p.3.) T.S. said she had phone sex with Mr. Jarrett and told him that she was 13 years old. (PSI, p.3.) She estimated that she had spoken with Mr. Jarrett over 100 times on the phone and said that Mr. Jarrett had told her he was 18, and then later said he was 17. (PSI, p.3.)

Mr. Jarrett was charged, by indictment, with one count of sexual abuse of a child under the age of sixteen years for soliciting T.S. to participate in sexual acts, and two counts of possession of sexually exploitative material for possessing the pictures of T.S. (R., pp.23-25.) Mr. Jarrett proceeded to trial and was found guilty on all counts. (R., pp.176-77, 189.) At the sentencing hearing, the State requested that the district court impose a sentence of twenty years, with seven years fixed, for the sexual abuse charge. (4/18/17 Tr., p.7, Ls.13-16.) The State did not make a specific recommendation regarding the other charges but stated that it would not

[1] All citations to the PSI and its attachments refer to the 175-page electronic document.

object if those sentences were run concurrent to the sentence for sexual abuse. (4/18/17 Tr., p.7, Ls.16-17.) Mr. Jarrett's counsel requested that the district court impose an underlying sentence of six years, with three years fixed, and place Mr. Jarrett on probation. (4/18/17 Tr., p.10, Ls.17-19.) In the alternative, he asked that the district court consider retaining jurisdiction so that Mr. Jarrett could participate in a rider program. (4/18/17 Tr., p.10, Ls.19-24.) The district court imposed a sentence of fifteen years, with five years fixed, for the sexual abuse charge, and two concurrent sentences of ten years, with five years fixed, for the possession of sexually exploitative material charges. (4/18/17 Tr., p.11, L.19 – p.12, L.2; R., pp.189-90.) Mr. Jarrett filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.192-94.)

ISSUE

Did the district court abuse its discretion when it imposed a sentence of fifteen years, with five years fixed, and two concurrent sentences of ten years, with five years fixed, following Mr. Jarrett's convictions for one count of sexual abuse of a child under the age of sixteen years, and two counts of possession of sexually exploitative material?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Fifteen Years, With Five Years Fixed, And Two Concurrent Sentences Of Ten Years, With Five Years Fixed, Following Mr. Jarrett's Convictions For One Count Of Sexual Abuse Of A Child Under The Age Of Sixteen Years, And Two Counts Of Possession Of Sexually Exploitative Material

Based on the facts of this case, Mr. Jarrett's sentences of fifteen years, with five years fixed, and two concurrent sentences of ten years, with five years fixed, are excessive because they are not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination of the record giving consideration to the nature of the offense, the character of the

offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). "When an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason." *State v. Hedger*, 115 Idaho 598, 600 (1989) (citation omitted). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion. *State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement was necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case," a sentence is unreasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, "under any reasonable view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Jarrett's sentence is excessive under any reasonable view of the facts. First, Mr. Jarrett is still very young. He was only 24 when he was arrested in this case. (PSI, pp.1, 3.) A defendant's youth is a long-recognized mitigating factor. *See e.g. State v. Dunnagan*, 101 Idaho 125, 126 (1980).

Additionally, Mr. Jarrett was struggling with substance abuse issues and pursuing treatment at the time of these offenses. (PSI, pp.11, 17.) The GAIN-I Recommendation and Referral Summary prepared in this case indicated that Mr. Jarrett reported symptoms sufficient to

meet the criteria for a moderate cannabis use disorder. (PSI, p.17.) The summary also indicated that Mr. Jarrett met "lifetime criteria" for a moderate substance use disorder. (PSI, p.17.) A defendant's substance abuse should also be considered as mitigating information. *State v. Nice*, 103 Idaho 89, 91 (1982) (reducing defendant's sentence, in part, because "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime [the defendant had been drinking at the time of the offense] and the suggested alternatives for treating the problem").

Additionally, as the district court itself noted, "the conduct that went on in this case could have been much worse . . . ." (4/18/17 Tr., p.11, Ls.6-7.) Indeed, as his defense counsel pointed out, Mr. Jarrett never once met T.S. in person, and there was never any physical contact between them. (4/18/17 Tr., p.10, Ls.13-14.) As such, these offenses were certainly not as serious as they could have been. This is another recognized mitigating factor. *State v. Jackson*, 130 Idaho 293, 295-96 (1997).

Finally, Mr. Jarrett demonstrated remorse at the sentencing hearing. He said, "I would just like to say that I am sorry for the victim and their families for having gone through all of this." (4/18/17 Tr., p.11, Ls.3-5.) A defendant's expressions of remorse should also be considered as mitigating information. *State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing sentence of defendant who, *inter alia*, "expressed regret for what he had done, especially for the effect it had upon his family and friends, but also indicated that he was confident he could be a productive citizen in the future").

Given all the mitigating information in this case, Mr. Jarrett's sentence was excessive because it was not necessary to accomplish the goals of sentencing outlined in *Toohill.* A rider program or shorter fixed terms would accomplish those goals. But most importantly, especially

in light of Mr. Jarrett's youth, either of those alternatives would give him a chance to engage in meaningful rehabilitation much sooner than he will be able to with his current sentence. The district court did not adequately consider these options or the mitigating information in this case. Therefore, it abused its discretion because it did not reach its decision through an exercise of reason or act consistently with the legal standards applicable to its choices regarding sentencing.

CONCLUSION

Mr. Jarrett respectfully requests that this Court reduce his sentences as it deems appropriate.

DATED this 21st day of December, 2017.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

SPENCER ALEXANDER JARRETT
INMATE #103428
ISCI
PO BOX 14
BOISE ID 83707

THOMAS J RYAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

ANDREW WOOLF
CANYON COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas